

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3474 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANJAYKUMAR K PAWAR

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR MUKESH PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/01/97

ORAL JUDGEMENT

1. The matter has come up on a note filed by the counsel for the petitioner. The prayer has been made in the note that this matter may be heard at an early date. On the request of counsel for both the parties, the matter was taken up for hearing today.

2. Challenge is made by the petitioner to the order dated 30th November, 1990, annexure 'C' under which his

services were terminated.

3. The facts which are not in dispute are that the petitioner was appointed under the order dated 13-5-1988 for a period of one month only on daily wages basis as peon in the office of respondent no.2. Under annexure 'B' the daily wages services of the petitioner were extended till further orders, but it has been specifically mentioned in the said order that his services are temporary and liable to be terminated at any time. It is the case of the petitioner that he continued upto 20th March, 1990 thereafter he was prevented from signing the muster roll as well as performing his duties which compelled him to file a suit being regular civil suit no.841/90 in the court of Civil Judge, (S.D.) Baroda challenging the aforesaid action of the respondent. In the suit, the petitioner had filed an application at Ex.5 for interim injunction restraining the respondents from preventing the petitioner from signing the muster roll and from dismissing/terminating the services of the petitioner without following the due process of law. The interim injunction sought for below Ex.5 has been granted by the trial court vide order dated 23rd November, 1990 restraining the respondents from preventing the petitioner from signing the muster roll as well as from dismissing/terminating the services of the petitioner without issuing the order as mentioned in the order dated 22nd June, 1988. Under the order dated 23rd November, 1990, annexure 'C' the services of the petitioner were terminated and hence this Special Civil Application.

4. The petitioner has come up with a case that under the order dated 5-12-1990, the petitioner was appointed on monthly pay of Rs.225/- on the post of sweeper on part-time basis. This appointment was only upto 29-12-1990. It is not the case of the petitioner in the petition that thereafter his appointment was continued.

5. Shri N.K. Majmudar, learned counsel for the petitioner contended that the order dated 30th November, 1990 has been passed without giving any notice or opportunity of hearing to the petitioner. It has next been contended that the suit was pending and as such, the respondents could not have terminated the services of the petitioner. Lastly, it is contended that the petitioner has acquired permanent status in the services, and as such, his services could not have been terminated.

6. On the other hand, the counsel for the respondents contended that the petitioner was appointed on purely temporary basis on daily wages and as such, he

has not acquired any right to the post. The services of the petitioner were terminated after following the due process of law. It is the case of termination of the services of a temporary employee and that too on daily wages, no notice or opportunity of hearing was required to be given to the petitioner. Lastly, the counsel for the respondents contended that the termination of the services of the petitioner has been made in compliance of the order passed by the civil court.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. It is not in dispute that the petitioner was given fixed term appointment and though that fixed term was extended, but it remains to be a temporary appointment with the condition that it is liable to be terminated at any time. So the services of the petitioner were liable to be terminated at any time as per the condition contained in the order dated 22-6-1988. The learned counsel for the petitioner has failed to show any provision from the rules made under Article 309 of the Constitution or any resolution of the Government which provides that the daily wagger employee who has been appointed purely on temporary basis after completing two years services, he got a right to be made permanent. A temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. It is not the case of the petitioner that he has been declared to be permanent Government servant but he was only a daily wagger employee. No notice or opportunity of hearing is required to be given to the petitioner as he was temporary daily wagger employee. The Hon'ble Supreme Court in the case of M.P.H.S.V.N. vs. Devendrakumar reported in JT 1995(1) SC 198 held that a temporary Government servant need not be given a notice or opportunity of hearing before his services are terminated. The reason is very obvious as he does not acquire any right to become permanent. The petitioner's appointment was conditional and it is a case where his services were terminated as per the term of the appointment. Reference may have to another decision of the Hon'ble Supreme Court in the case of Ramakant Shripad Sihai Adval Palkar vs. Union of India reported in AIR 1991 SC 1145 and of this court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995(2) GLH 228.

8. The petitioner has approached to the civil court and civil court protected him to the extent that his services can be dispensed with only after passing an appropriate order and not otherwise. The civil court has

made it clear that the respondents are at liberty to terminate the services of the petitioner in accordance with law. What exactly has been done in the present case. None of the legal or fundamental rights of the petitioner are being infringed. The termination of services of the petitioner is perfectly legal and justified and no interference is called for therein.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

zgs/-